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United States Department of Energy
Office of Hearings and Appeals

In the Matter of: Personnel Security Hearing)
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Filing Date: August 9, 2019)
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Case No.: PSH-19-0045

Issued: December 3, 2019

Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should be restored.

I. Background

The Individual is employed by a DOE contractor in a position that requires him to hold a security clearance. In late May of 2018, the Individual tested positive for alcohol during a random drug and alcohol screening administered by his employer. Ex. 7. The Individual was then referred to a Substance Abuse Professional (SAP) for evaluation. *Id.*; Ex. R. Following the evaluation, the Individual completed a Letter of Interrogatory (LOI), provided by the Local Security Office (LSO) in January 2019. Ex. 8. In response to information gathered from the LOI, a DOE consulting psychiatrist (Psychiatrist) evaluated the Individual in March 2019. Ex. 9.

Due to unresolved security concerns related to the Individual's reported alcohol consumption, the LSO informed the Individual, in a Notification Letter dated July 18, 2019 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the Individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (alcohol consumption) of the Adjudicative Guidelines. Ex. 1.

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted eleven numbered exhibits (Exhibits 1-11) into the record and presented the testimony of the Psychiatrist. The Individual introduced eighteen lettered exhibits (Exhibits A-R) into the record, and presented the testimony of five witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

II. Regulatory Standard

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

III. Notification Letter and Associated Security Concerns

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the Individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. Guideline G relates to security risks arising from excessive alcohol consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. Guideline G at ¶ 21. In citing Guideline G, the LSO relied upon the evaluation of the Psychiatrist, who determined that the Individual met the criteria for a diagnosis of Alcohol Use Disorder, Moderate, in early remission, without adequate evidence of rehabilitation or reformation, as described in the Diagnostic and Statistical Manual of Mental Disorders, by the American Psychiatric Association, Fifth Edition, (DSM-5). Ex. 1. As further bases for citing Guideline G, the LSO relied upon the Individual’s positive random breathalyzer test and his admissions within the LOI that: (1) he became intoxicated

the night before the random breathalyzer was administered, drinking at least six mixed drinks with double shots of alcohol; and (2) prior to late May of 2018, he became intoxicated daily, consuming two to three mixed drinks each day. *Id.*

IV. Findings of Fact

The Individual acknowledged the accuracy of the allegations in the Notification Letter and sought to mitigate any security concerns. Tr. at 137. I have carefully considered the totality of the record in reaching the findings of fact set forth below.

In June of 2018, after testing positive for alcohol during a random workplace screening, the Individual voluntarily admitted himself into a 30-day inpatient drug and alcohol treatment program. Ex. 6; Tr. at 111. After successfully completing the inpatient program, the Individual began, and subsequently successfully completed, an eight week Intensive Outpatient Program (IOP). Ex. 6; Ex. B. In the January 2019 LOI, the Individual admitted that, the night prior to the random breathalyzer, he became intoxicated. He acknowledged that he consumed approximately six mixed drinks, containing approximately three ounces of alcohol each. Ex. 8 at 1-2. He further noted that he would become intoxicated on a daily basis, generally consuming two to three mixed drinks each day. *Id.*

In early March 2019, the Psychiatrist conducted an evaluation of the Individual. Ex. 9. In his report, the Psychiatrist explained that the Individual had been experiencing “significant stressors” in his family life and noted that the Individual stated that his “escape was alcohol.” Ex. 9 at 4. The Psychiatrist reported that the Individual acknowledged that his wife complained about his alcohol consumption; however, the Individual did not believe that he had a problem with alcohol until he tested positive during the random screening and realized the likely extent of his blood alcohol level the night prior to the screening. *Id.*

Although the Psychiatrist noted that the Individual had willingly complied with all “recommended interventions” following his positive alcohol screening, he explained that the Individual’s recovery time had been “short and some of the aspects of it are less than ideal.” *Id.* at 8. Specifically, he cited that the Individual was “relatively isolated and without a confid[a]nt should [alcohol] cravings present themselves.” *Id.* at 8-9. However, the Psychiatrist additionally cited that the Individual seemed to be enjoying his sobriety. *Id.* at 9.

In his Report, the Psychiatrist ultimately diagnosed the Individual as suffering from Alcohol Use Disorder, Moderate, in early remission, with a “seemingly good prognosis.” *Id.* However, he did not feel that the Individual had demonstrated adequate evidence of rehabilitation or reformation and determined that, in order for the Individual to show adequate evidence of rehabilitation or reformation, he would need to show “ongoing documented evidences of meeting attendance and ideally association with a sponsor and confirmation of ‘working on a program.’” *Id.* He also indicated that he would like the Individual to achieve a year of sobriety. *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual’s eligibility for access authorization, I have been guided by the applicable factors

prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual has sufficiently mitigated the security concerns noted by the LSO with regard to Guideline G. I find that restoring the Individual's DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the Individual's security clearance should be restored. The specific findings that I make in support of this decision are discussed below.

At the hearing, five witnesses testified on the Individual's behalf: his psychologist, his aftercare facilitator, a colleague, his wife, and the Individual himself. The Individual's psychologist (Psychologist) testified, stating that he had performed a psychological evaluation on the Individual in July of 2019 and had been seeing him for individual therapy since that time. Tr. at 11. He stated that he diagnosed the Individual with Alcohol Dependence in Remission, finding that the alcohol "issues ha[d] been substantially resolved." *Id.* at 12. The Psychologist noted that the Individual's prognosis was "quite positive" as he had been abstinent from alcohol for approximately a year and a half, as proven by his alcohol testing. *Id.* at 17; *see* Ex. C. He asserted that the Individual gave him "every reason to believe that what [the Individual] is doing is successful." *Id.* Ultimately, the Psychologist testified that he felt the Individual had shown adequate evidence of rehabilitation and reformation. *Id.* at 23.

The Individual's Aftercare Facilitator (Facilitator) testified that, for approximately a year and a half, the Individual has "been coming diligently" to the IOP aftercare meetings. *Id.* at 43-44, 54. He stated that the Individual participates meaningfully in the group by sharing his own challenges, as well as providing insight to others. *See id.* at 44-45. The Facilitator relayed that the Individual quickly acknowledged his "maladaptive past alcohol use," and stated that the Individual's approach to his sobriety "is working," noting that "not everything works for everybody." *Id.* at 49-50.

The Individual testified that he had been abstinent from alcohol since May 30, 2018, approximately 16 months. Tr. at 110. When asked why he made the decision to stop consuming alcohol, he stated, "I was able to become honest with myself and realize that...I was drinking myself to death." *Id.* at 136. The Individual stated that during his IOP, he attended approximately three AA meetings per week, and he underwent weekly urine drug screenings, all of which produced results that were negative for drugs or alcohol. *Id.* at 110, 113; Ex. C. The Individual noted that he has been consistently attending IOP weekly aftercare meetings since completing the program in July 2018. *Id.* at 112. Although he did obtain an AA sponsor and continued to attend AA meetings "sporadically" after completing the IOP, he stated that he prefers his weekly aftercare meetings as they are "less structured" and allow him to engage in a more meaningful manner. *Id.* at 114-116, 134. The Individual testified that, through his counseling and therapy, he has "learned how to be more honest with [himself]...[and] how to communicate a little bit better." *Id.* at 127. He noted that he does not keep alcohol in his home, and he intends to continue to abstain from alcohol for the foreseeable future because he "know[s]...[he] won't be able to drink socially." *Id.* at 126, 133.

The Individual's colleague (Colleague) testified that he has known the Individual for approximately 14 years, and for the majority of their relationship, he has interacted with the Individual on a daily basis. *Id.* at 66. The Colleague stated that the Individual has been "very forthright" about the problems with his alcohol consumption, and indicated that "[i]t was something he wanted to fix in his life." *Id.* at 69. The Colleague discussed the Individual's dedication to his aftercare meetings, stating that he is "[a]damant about not missing any meetings," often turning down overtime to

ensure his attendance. *Id.* at 70. He noted that the Individual is fully committed to his sobriety and is “really excited about it.” *Id.* at 78-79. The Colleague testified that the Individual stated that “[h]e has zero intention of ever drinking again.” *Id.* at 85-86.

The Individual’s wife (Wife) also testified on the Individual’s behalf. She stated that the Individual has “accepted responsibility for his past drinking.” *Id.* at 99. She noted that when he was consuming alcohol, she could not “count on him...because he might be at home drinking and not able to drive.” She stated that since he has been abstinent from alcohol, he is able to fully support her, even during a recent medical emergency. *Id.* at 100. The Wife indicated that the Individual is able to handle his stress without alcohol by exercising and taking time to decompress every day after work. *Id.* at 109. She felt that the Individual is “[a]bsolutely committed” to his sobriety and no longer sees alcohol as a crutch. *Id.* at 104. The Wife stated that the Individual informed her that “he doesn’t need it [alcohol] to function in life any longer.” *Id.*

The DOE’s Psychiatrist, after observing the hearing and listening to the testimony offered by the Individual and all other witnesses, testified that he felt that the Individual had shown adequate evidence of rehabilitation or reformation, as the Individual had shown “a lot of really good things,” such as the length of his sobriety, his commitment to his sobriety, and the pleasure he is taking from his sobriety. *Id.* at 142. The Psychiatrist noted that the Individual’s awareness of his lack of control when it comes to alcohol was a positive attribute, and stated that the Individual is “better off,” “on a good roll,” and “has an even better prognosis” than after the initial evaluation. *Id.* at 142, 151. The Psychiatrist described the Individual as “committed” and supported. *Id.* The Psychiatrist further noted that, after hearing the testimony, he felt the Individual was no longer in “early remission,” but was now in “sustained remission.” *Id.* at 153.

Guideline G

Diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder is a condition that could raise a security concern and may disqualify an individual from holding a security clearance. Guideline G at ¶ 22(d). If an individual acknowledges his pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, he may be able to mitigate the security concern. *Id.* ¶ 23(b). In this case, the Psychiatrist diagnosed the Individual with Alcohol Use Disorder, Moderate, in Early Remission. Ex. 9 at 8. However, the Psychiatrist opines that the Individual is now in sustained remission. Furthermore, the Individual has acknowledged that he had a problem with alcohol and has successfully completed both an inpatient rehabilitation program and an IOP. He has been abstinent from alcohol for approximately 16 months and consistently attends and meaningfully engages in weekly aftercare meetings. *See* Guideline G at ¶ 23(b).

It is clear, based upon the evidence in the record and the testimony presented at the hearing, that the Individual has taken substantial steps to overcome the concerns regarding his alcohol consumption. As such, I find that the Individual has adequately established that restoring his security clearance will not endanger the common defense and security, and that doing so is clearly consistent with the national interest. Thus, I conclude that the Individual has sufficiently resolved the security concerns set forth in the Notification Letter with respect to Guideline G.

VI. Conclusion

After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the Individual has brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I have determined that the Individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana
Administrative Judge
Office of Hearings and Appeals